

EXHIBIT E31

WEIRICK, et al. vs. BRENNTAG NORTH AMERICA, INC., et al.

HON. MARGARET L. OLDENDORF, JUDGE

DEFENDANTS.

Certified Transcript

TRIAL DAY 19, AUGUST 24, 2018 PM SESSION

WEIRICK, et al. vs. BRENNTAG NORTH AMERICA, INC., et al.

APPEARANCES OF COUNSEL: (CONTINUED)

FOR THE DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON
CONSUMER, INC.:

ORRICK, HERRINGTON & SUTCLIFFE, LLP
BY: L. CHRISTOPHER VEJNOSKA, ESQ.
WARRINGTON PARKER, ESQ.
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105

KING & SPALDING, LLP
BY: JENNIFER TAYLOR STEWART, ESQ.
633 WEST FIFTH STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071

FOR THE DEFENDANT IMERYS TALC AMERICA, INC.:

DENTONS US, LLP
BY: BRADFORD J. DEJARDIN, ESQ.
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017

SELMAN BREITMAN
BY: JOHN P. KATERNDAHL, ESQ.
11766 WILSHIRE BOULEVARD, 6TH FLOOR
LOS ANGELES, CALIFORNIA 90025

TRIAL DAY 19, AUGUST 24, 2018 PM SESSION

WEIRICK, et al. vs. BRENNTAG NORTH AMERICA, INC., et al.

18 (Pages 2917 to 2920)

Page 2917	Page 2919
<p>1 THE COURT: SO MARKED.</p> <p>2</p> <p>3 (DEFENDANTS' EXHIBIT 9665 MARKED FOR</p> <p>4 IDENTIFICATION.)</p> <p>5</p> <p>6 MR. PARKER: WHEN THE COURT HAS HAD AN</p> <p>7 OPPORTUNITY, I WILL ASK TO APPROACH.</p> <p>8 THE WITNESS: THANK YOU.</p> <p>9 THE COURT: YOU MAY APPROACH.</p> <p>10 BY MR. PARKER:</p> <p>11 Q YOU KNOW THIS CONTAINS THE DEFINITION OF</p> <p>12 ASBESTOS BECAUSE YOU HELPED WRITE IT; CORRECT?</p> <p>13 A YES, SIR.</p> <p>14 Q I BET YOU CAN EVEN TELL US WHERE IT IS. WHY</p> <p>15 DON'T YOU DO THAT. WHY DON'T WE DO THAT.</p> <p>16 A WELL, DEPENDS ON WHAT DEFINITION YOU WANT, THE</p> <p>17 ASBESTOS DEFINITION OR THE TEM COUNTING.</p> <p>18 Q I ACTUALLY WANT THE ONE THAT USES THE WORD</p> <p>19 ASBESTOS IN ITS 3.1.2 AND 3.1.21.</p> <p>20 A OKAY.</p> <p>21 THE COURT: NO OBJECTION TO PUBLISHING, I</p> <p>22 PRESUME?</p> <p>23 MR. STUEMKE: NO. SORRY.</p> <p>24 THE COURT: GO AHEAD.</p> <p>25 BY MR. PARKER:</p> <p>26 Q AND THAT THERE RIGHT BEFORE THE JURY UNDER</p> <p>27 HEADING 3.1.2 IS THE WORD "ASBESTOS" AND THEN 3.1.21 --</p> <p>28 I'M SORRY. 3.1.2.1 IS THE WORD "DISCUSSION"; CORRECT?</p>	<p>1 A THAT'S CORRECT.</p> <p>2 Q AND THEN JAMES MILLETTE -- YOU KNOW HIM?</p> <p>3 A YES, SIR. I'VE MET HIM A TIME OR TWO.</p> <p>4 Q THINK HE'S A GREAT SCIENTIST, DON'T YOU?</p> <p>5 A YES. HE IS ONE OF THE -- HE IS A GREAT</p> <p>6 SCIENTIST. I CONSIDER HIM A COLLEAGUE, BUT LIKE ALL</p> <p>7 SCIENTISTS, THERE'S THINGS WE AGREE ON AND THERE'S</p> <p>8 THINGS WE DON'T.</p> <p>9 Q RIGHT. BUT AT LEAST WE CAN AGREE ON THIS. IN</p> <p>10 THE PAST YOU HAVE ACTUALLY USED HIS SERVICES FOR QUALITY</p> <p>11 CONTROL; CORRECT?</p> <p>12 A THAT'S CORRECT.</p> <p>13 Q AND HE WROTE AN ARTICLE. WELL, HOLD ON.</p> <p>14 YOU'VE WRITTEN ARTICLES WITH HIM?</p> <p>15 A I HAVE.</p> <p>16 Q ONE, TWO, THREE, FOUR, FIVE, SIX. AT LEAST</p> <p>17 SIX; CORRECT?</p> <p>18 A YES, SIR. WE'VE BEEN CO-AUTHORS ON A NUMBER</p> <p>19 OF ANALYTICAL TECHNIQUES NOT INVOLVING TALC, BUT</p> <p>20 ANALYTICAL TECHNIQUES AND STUDIES.</p> <p>21 Q AND HE PUBLISHED A PAPER IN 2015 REGARDING THE</p> <p>22 ANALYSIS OF TALC FOR ASBESTOS; CORRECT?</p> <p>23 A YES, SIR.</p> <p>24 MR. PARKER: YOUR HONOR, I'D LIKE TO PUBLISH</p> <p>25 FOR THE JURY THE FIRST PAGE OF EXHIBIT 9290, WHICH PAGE</p> <p>26 WAS SHOWN TO THE JURY YESTERDAY.</p> <p>27 THE COURT: WHICH DOCUMENT IS THIS?</p> <p>28 MR. PARKER: IT'S DR. JAMES MILLETTE. IT'S AN</p>
Page 2918	Page 2920
<p>1 A YES, SIR.</p> <p>2 Q IT SAYS UNDER DISCUSSION, "INCLUDED IN THE</p> <p>3 DEFINITION OF ASBESTOS ARE THE ASBESTIFORM VARIETIES OF</p> <p>4 SERPENTINE, CHRYSOTILE" -- WHAT'S THAT WORD?</p> <p>5 A GRUNERITE, ANTHOPHYLLITE, TREMOLITE, AND</p> <p>6 ACTINOLITE.</p> <p>7 Q (READING.)</p> <p>8 "INCLUDED IN THE DEFINITION ARE THE</p> <p>9 ASBESTIFORM VARIETIES OF SERPENTINE</p> <p>10 CHRYSOTILE, RIEBECKITE, CROCIDOLITE,</p> <p>11 GRUNERITE (GRUNERITE ASBESTOS)</p> <p>12 ANTHOPHYLLITE (ANTHOPHYLLITE ASBESTOS),</p> <p>13 TREMOLITE (TREMOLITE ASBESTOS) AND</p> <p>14 ACTINOLITE ASBESTOS."</p> <p>15 DID I READ THAT RIGHT?</p> <p>16 A YES, SIR. THAT'S WHAT IT SAYS.</p> <p>17 MR. PARKER: GETTING TOWARDS THE END THERE,</p> <p>18 YOUR HONOR.</p> <p>19 Q NOW, LET'S SEE IF WE CAN GET THIS RIGHT.</p> <p>20 ALICE BLOUNT, WHO YOU USE AS A REFERENCE SOURCE FOR</p> <p>21 PREPARING SAMPLES, USED PLM?</p> <p>22 A YES. THAT WAS THE ANALYTICAL TECHNIQUE SHE</p> <p>23 CHOSE.</p> <p>24 Q AND MCCRONE USED PLM, XRD, AND TEM TO TEST</p> <p>25 COSMETIC TALC; CORRECT?</p> <p>26 A THAT'S CORRECT.</p> <p>27 Q AND WALTER MCCRONE, YOU CONSIDER HIM ONE OF</p> <p>28 THE BEST OPTICAL MICROSCOPISTS IN THE WORLD; CORRECT?</p>	<p>1 ARTICLE ENTITLED "PROCEDURE FOR THE ANALYSIS OF TALC FOR</p> <p>2 ASBESTOS."</p> <p>3 THE COURT: OKAY. YOU MAY PUBLISH.</p> <p>4 MR. PARKER: AND IF WE COULD HIGHLIGHT JUST</p> <p>5 THE ABSTRACT.</p> <p>6 Q YOU'VE SEEN THIS BEFORE. YES?</p> <p>7 A YES, SIR, I HAVE.</p> <p>8 Q AND IN HERE, DR. MILLETTE IS SAYING WHAT?</p> <p>9 "THE ANALYSIS OF TALC POWDER FOR</p> <p>10 ASBESTOS IS MOST APPROPRIATELY DONE WITH A</p> <p>11 COMBINATION OF POLARIZED LIGHT MICROSCOPY</p> <p>12 (PLM), TRANSMISSION ELECTRON MICROSCOPY,</p> <p>13 (TEM), AND IN SOME CASES, A SCREENING BY</p> <p>14 X-RAY DIFFRACTION."</p> <p>15 CORRECT?</p> <p>16 A YES, SIR. THAT'S WHAT HE STATED.</p> <p>17 Q AND HE ALSO RECOMMENDS TO USE A PLM METHOD</p> <p>18 FROM EPA R-93; CORRECT?</p> <p>19 A YES, SIR, HE DOES.</p> <p>20 Q AND YOU DON'T THINK THERE'S ANYTHING WRONG</p> <p>21 WITH USING PLM, XRD, AND TEM; CORRECT?</p> <p>22 A NO, SIR, I DON'T.</p> <p>23 Q AND THEN LEE POYE -- YOU SENT SAMPLES OF</p> <p>24 MS. WEIRICK'S BOTTLES TO LEE POYE; CORRECT?</p> <p>25 A YES, SIR.</p> <p>26 Q NOW, LEE POYE -- I ASSUME YOU TRUST THE MAN.</p> <p>27 HE'S A GOOD MAN?</p> <p>28 A YES, SIR. HE RUNS A VERY GOOD LAB.</p>

TRIAL DAY 19, AUGUST 24, 2018 PM SESSION

WEIRICK, et al. vs. BRENNTAG NORTH AMERICA, INC., et al.

19 (Pages 2921 to 2924)

Page 2921	Page 2923
<p>1 Q AND YOU SELECTED HIM?</p> <p>2 A YES, SIR, I DID.</p> <p>3 Q AND HE USED PLM?</p> <p>4 A THAT'S WHY I HIRED HIM TO DO THAT, TO USE PLM</p> <p>5 AND XRD. SO I WOULD HOPE HE WOULD DO THAT BECAUSE THAT</p> <p>6 WAS THE INSTRUCTIONS, AND HE DID DO IT.</p> <p>7 Q AND HE DIDN'T FIND ANY ASBESTOS IN</p> <p>8 MS. WEIRICK'S SAMPLE; CORRECT?</p> <p>9 A NOT USING THE R-93 EPA METHOD OR THE XRD, NO.</p> <p>10 THAT'S THE PROBLEM WITH IT, OF COURSE.</p> <p>11 Q AND IT'S TRUE, ISN'T IT, THAT YOU --</p> <p>12 MOTION TO STRIKE AFTER "NO."</p> <p>13 THE COURT: OVERRULED.</p> <p>14 BY MR. PARKER:</p> <p>15 Q ISN'T IT TRUE -- WELL, LET ME JUST SAY THIS.</p> <p>16 IS IT YOUR OPINION THAT IF YOU USE THE PLM</p> <p>17 METHOD, YOU CANNOT FIND IN MS. WEIRICK'S SAMPLE ANY</p> <p>18 AMPHIBOLES AT ALL?</p> <p>19 A THE R-93 METHOD YOU WILL NOT FIND IT, NO.</p> <p>20 Q ISN'T IT TRUE, SIR, THAT THE REASON YOU DID</p> <p>21 NOT WANT TO USE THE PLM METHOD IS YOUR RELIANCE ON</p> <p>22 BLOUNT DESPITE DR. MILLETTE'S ARTICLE OF LEE POYE'S USE</p> <p>23 BECAUSE YOU KNEW YOU WERE NOT GOING TO FIND ASBESTOS IN</p> <p>24 MS. WEIRICK'S BOTTLE?</p> <p>25 A NO. WE DIDN'T KNOW ANYTHING UNTIL WE DID THE</p> <p>26 TEM ANALYSIS. AFTER WE SAW THE TEM ANALYSIS, WE KNOW</p> <p>27 THOSE CONCENTRATIONS. THE PLM METHOD IS NOT APPROPRIATE</p> <p>28 TO DO AN EVALUATION FOR THESE TYPES OF PRODUCTS.</p>	<p>1 A THAT'S NOT MY OPINION. THESE ARE ASBESTIFORM.</p> <p>2 THAT'S MY OPINION.</p> <p>3 MR. PARKER: THAT WASN'T MY QUESTION. MOVE TO</p> <p>4 STRIKE AS NONRESPONSIVE.</p> <p>5 THE COURT: OVERRULED.</p> <p>6 BY MR. PARKER:</p> <p>7 Q YOU DID NOT -- WE READ THE DEFINITION OF</p> <p>8 ASBESTIFORM FROM EPA AHERA; CORRECT?</p> <p>9 A YES, SIR, WE DID.</p> <p>10 Q YOU DID NOT DETERMINE WHETHER OR NOT THE ITEMS</p> <p>11 THAT YOU FOUND WERE ASBESTIFORM AMPHIBOLES AS DEFINED BY</p> <p>12 THE EPA AHERA IN THE DEFINITIONS THAT I READ TO YOU?</p> <p>13 A NO, SIR. I DISAGREE. THAT'S NOT MY OPINION.</p> <p>14 Q NOW, WHATEVER YOU FOUND, LET'S JUST CLOSE IT</p> <p>15 OUT THIS WAY. WHATEVER YOU FOUND, YOU'RE NOT HERE TO</p> <p>16 TELL THE JURY THAT THERE'S ANY -- THAT THAT LED TO ANY</p> <p>17 DISEASE THAT MS. WEIRICK MAY BE FACING; CORRECT?</p> <p>18 A THAT'S CORRECT. I AM NOT.</p> <p>19 MR. PARKER: YOUR HONOR, IF I MAY HAVE JUST A</p> <p>20 MOMENT.</p> <p>21 THE COURT: SURE.</p> <p>22 MR. PARKER: HAVE WE TAKEN AN AFTERNOON BREAK,</p> <p>23 YOUR HONOR?</p> <p>24 THE COURT: NO.</p> <p>25 MR. PARKER: IF WE CAN DO THAT. IT MAY BE</p> <p>26 THAT I CAN THEN AFTERWARDS SAY I'M DONE. IS THAT ALL</p> <p>27 RIGHT WITH YOU?</p> <p>28 THE COURT: SURE. LADIES AND GENTLEMEN, LET'S</p>
Page 2922	Page 2924
<p>1 Q BUT YOUR SHOP -- AVOIDING THE "YOU" ISSUE,</p> <p>2 YOUR SHOP DIDN'T EVEN TRY TO ANALYZE THE TALC IN</p> <p>3 MS. WEIRICK'S BOTTLE USING A PLM METHOD; CORRECT?</p> <p>4 A WE DID NOT DO THE PLM METHOD ON THAT SAMPLE.</p> <p>5 THAT'S CORRECT.</p> <p>6 Q THAT'S BECAUSE YOU KNEW IT WAS NOT GOING TO BE</p> <p>7 ABLE TO FIND ASBESTOS IN THAT BOTTLE; CORRECT?</p> <p>8 A WELL, I HAVE A HYPOTHESIS AT THOSE LOW</p> <p>9 CONCENTRATIONS YOU WILL NOT IN THAT THE MOST APPROPRIATE</p> <p>10 METHOD IS TEM. HOWEVER, WE DID SEND IT OFF BECAUSE WE</p> <p>11 ARE WRITING A PAPER TOGETHER COMPARING THE R-93, THE</p> <p>12 XRD, AND TEM WHERE WE HAVE ALL OF THEM.</p> <p>13 MR. PARKER: MOVE TO STRIKE EVERYTHING AFTER</p> <p>14 THE STATEMENT, "WELL, I HAVE A HYPOTHESIS OF THOSE LOW</p> <p>15 CONCENTRATIONS YOU WILL NOT IN THAT -- YOU WILL NOT IN</p> <p>16 THAT THE MOST APPROPRIATE METHOD IS TEM."</p> <p>17 THE COURT: MOTION TO STRIKE GRANTED.</p> <p>18 BY MR. PARKER:</p> <p>19 Q AND, SIR, YOU SAID YOU HAVE A HYPOTHESIS, BUT</p> <p>20 LET ME JUST ASK YOU. YOUR SHOP DID NOT TEST YOUR</p> <p>21 HYPOTHESIS; CORRECT?</p> <p>22 A WE DID NOT DO PLM IN THOSE SAMPLES. THAT IS</p> <p>23 CORRECT.</p> <p>24 Q WHAT YOU DIDN'T ALSO DO THEN, AT LEAST FOR</p> <p>25 INDIVIDUAL FIBERS, IS DETERMINE WHETHER OR NOT IT MET</p> <p>26 THE DEFINITION OF ASBESTIFORM IN THE EPA -- EPA AHERA</p> <p>27 STANDARD, THE DEFINITION I READ TO YOU AND THAT WE READ</p> <p>28 TOGETHER AND SHOWED THE JURY; CORRECT?</p>	<p>1 BREAK FOR 15 MINUTES. GET UP. STRETCH YOUR LEGS. WE</p> <p>2 WILL BREAK UNTIL 3:20. YOU CAN LEAVE YOUR BOOKS.</p> <p>3 PLEASE DON'T TALK ABOUT THE CASE. THANK YOU.</p> <p>4</p> <p>5 (THE JURORS EXITED THE COURTROOM.)</p> <p>6 (THE FOLLOWING PROCEEDINGS WERE HELD</p> <p>7 OUTSIDE THE PRESENCE OF THE JURY.)</p> <p>8</p> <p>9 THE COURT: ALL RIGHT. SO ONCE WE START, WE</p> <p>10 HAVE AN HOUR AND TEN MINUTES TO GET EVERYTHING DONE.</p> <p>11 MR. STUEMKE: YOUR HONOR, IF I MAY. COUNSEL,</p> <p>12 I THINK, JUST OPENED THE DOOR TO THE WITNESS OFFERING AN</p> <p>13 EXPOSURE OPINION GIVEN THAT THEY -- HE ASKED HIM WHETHER</p> <p>14 YOU'RE NOT HERE TO SAY THAT THIS BOTTLE CAUSED ANY</p> <p>15 DISEASE IN MS. WEIRICK.</p> <p>16 COUNSEL KNOWS VERY WELL HE'S NOT OFFERED ANY</p> <p>17 MEDICAL OPINION, NOR WOULD HE. HE'S TRYING TO</p> <p>18 CAPITALIZE ON WHAT WE BELIEVE TO BE THE ERRONEOUS</p> <p>19 EXCLUSION OF THE WITNESS' EXPOSURE OPINION AS IT WAS</p> <p>20 EXPRESSED REPEATEDLY THROUGHOUT HIS DEPOSITION, AND THEY</p> <p>21 HAVE JUST TRIED TO CAPITALIZE ON THAT ISSUE YET AGAIN,</p> <p>22 IMPROPERLY, AND THEY'VE OPENED THE DOOR TO THIS WITNESS</p> <p>23 TESTIFYING ABOUT HIS OPINION ABOUT HER EXPOSURE TO</p> <p>24 ASBESTOS FROM THIS BOTTLE.</p> <p>25 THE COURT: NO. I DISAGREE. I DISAGREE.</p> <p>26 IT'S NOT OPENED.</p> <p>27 (RECESS TAKEN.)</p> <p>28 (THE JURY ENTERED THE COURTROOM.)</p>

TRIAL DAY 19, AUGUST 24, 2018 PM SESSION
WEIRICK, et al. vs. BRENNTAG NORTH AMERICA, INC., et al.

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NE-P HON. MARGARET L. OLDENDORF, JUDGE
4
5 CAROLYN WEIRICK, ET AL.,)
6 PLAINTIFFS,) CASE NO. BC656425
7 VS.)
8 BRENNTAG NORTH AMERICA, INC., ET)
9 AL.,)
10 DEFENDANTS.)
11
12
13

14 I, DEBORAH MORIN, CSR NO. 11558, OFFICIAL REPORTER
15 PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
16 FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
17 FOREGOING PAGES, 2861 THROUGH 2967, COMPRISE A FULL, TRUE AND
18 CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN
19 THE ABOVE-ENTITLED CAUSE ON AUGUST 24, 2018.

20 DATED THIS 25TH DAY OF AUGUST, 2018.

21
22 *Deborah Morin*
23 _____, CSR NO. 11558
24 DEBORAH MORIN, OFFICIAL REPORTER
25
26
27
28